

EMPLOYMENT TRAINING PANEL AGREEMENT

Terms and Conditions

1. Term: This training Agreement is entered into by the Employment Training Panel ("ETP") and **(Insert company/entity's legal name)** ("Contractor"). The term is _____ through (Term). The parties intend to utilize public funding to assist the Contractor in conducting a job training project for eligible trainees in accordance with the Training Plan, Exhibit A; Curriculum, Exhibit B; and, Subcontracts, Exhibit C.
 - ***If project utilizes a budget, you will need to add "Exhibit D, Budget" to the above sentence – and add Exhibit D, Budget to the ETP100template. DELETE THIS COMMENT.***
2. Payments:
 - a. ETP shall pay Contractor no more than \$*_____. This amount shall be earned upon the completion of all performance requirements within the Agreement term as indicated in paragraph 1., above. Progress payments for partial performance under Paragraph 2(c) shall not be deemed earned. Reimbursement shall be earned for no more than the number of trainees to be retained as listed by job number and only as specified in Exhibit A, Chart 1, Summary (hereafter, Chart 1).
 - ***Insert the following paragraph (a.1) for single and MEC retraining contracts only. Does not apply to new-hires. Delete for new-hire contracts.***
 - a.1 ETP will not reimburse Contractor for uncompensated time spent in retraining where attendance is employer mandated within the meaning of state and federal work orders. (See Division of Labor Standards Enforcement Manual at Section 46.6.5)
 - b. Each trainee should complete 100% of the required class/lab and videoconference training hours. The Panel will not reimburse the Contractor for a trainee who does not complete a minimum 80% of the required class/lab and videoconference training. One hundred percent of reimbursement for class/lab and videoconference training for all trainees shall be earned only if Contractor's records show training hours were delivered to enable each trainee to attend 100 % of required training hours. However, if Contractor's records do not substantiate these training hours were delivered, then Contractor will be reimbursed according to the highest percentage of training that has been substantiated as delivered to at least one trainee.
- ***If CBT is provided, insert the following paragraph. If no CBT, delete paragraph.***

For projects with computer-based training (CBT), each trainee should complete 100% of each CBT course. The Panel will not reimburse the Contractor for a trainee who does not complete a minimum 80% of required CBT hours. Reimbursement for each completed CBT course shall be for the standard number of hours to complete the course and is contingent upon certification of trainee competency at completion of training.

- ***If project does not utilize variable reimbursement method, delete the following language. For projects utilizing variable reimbursement only, delete paragraph “b” above and use the following language only. For projects utilizing both standard and variable reimbursement method, include paragraph (b) above, and insert the following language.***

Reimbursement for class/lab and videoconference training for trainees in job numbers **(insert job numbers that will utilize variable reimbursement method)** will be based on the total actual number of training hours completed by training delivery method for each trainee, up to the maximum specified in Chart 1, providing the minimum and no more than the maximum hours are met. For computer-based training, each trainee must complete 100% of each CBT course and achieve competency in course. Reimbursement shall be for the standard number of hours to complete the course, providing the minimum and no more than the maximum number of training hours identified on Chart 1 are met.

- ***For CNA to LVN Agreements only, add the following paragraph as 2.b1. Delete if not applicable.***

- b.1 Contractor represents that the training program, facilities and instructors have been approved by the California Board of Vocational Nursing and Psychiatric Technicians (BVNPT) and shall continue to be so approved throughout the term of this Agreement.
- c. Contractor may invoice ETP as each trainee reaches qualifying benchmarks and may receive unearned progress payments for cash flow purposes as indicated in Chart 1 Summary columns 10 through 13. All progress payments are earned only after the training and employment retention are completed and the Contractor completes all other requirements of this Agreement.

- ***If no job numbers will utilize variable reimbursement, delete the following language. If any job numbers will be reimbursed utilizing variable reimbursement method, insert the following paragraph in addition to the paragraph (c) above.***

For job numbers utilizing variable reimbursement method, progress payments will be made by ETP at enrollment (P1); at completion of training (P2); and, at completion of the post-training retention period (F). The progress payment at enrollment will be made at the time of completion by each trainee of 8 hours of training and will amount to 25% of the average cost per trainee for each job number. Unearned progress payments may not exceed 75% of the amount available for reimbursement based on the number of trainees enrolled and the maximum number to be retained for this Agreement. No job number changes will be allowed for trainees originally enrolled in a job using variable reimbursement.

- d. Contractor shall submit invoices and necessary statistical data to ETP in a form and manner prescribed by ETP. The Contractor may submit a job number closeout invoice

once all trainees in the job number have completed training, are certified competent if CBT is part of the training plan, and have been hired or retained in the job for the retention period specified herein. The Contractor shall submit the Final Fiscal Invoice to ETP within 30 days after the ending date of the Agreement.

- e. Trainee Enrollment: Contractor must submit a valid Social Security Number (SSN) and demographic information to ETP for each trainee as a condition of enrollment. The demographic information shall consist of the trainee's ethnicity, educational level, gender and age. The SSN and demographic information must be submitted on-line as prescribed by ETP.
- e.1 Contractor understands that it has the sole responsibility for ensuring that a written release or other form of authorization is on file for each trainee, as may be required, prior to submitting the SSNs and demographic information to ETP.
- e.2 ETP represents that the SSNs shall only be used to access trainee employment and wage history in the Unemployment Insurance data base maintained by the Employment Development Department. ETP represents that the demographic information shall only be used to compile statistical data in the aggregate. ETP represents that the SSNs and demographic information shall be maintained in confidence using administrative, technical and physical safeguards.
- ***The following paragraph is not applicable for (1) agreements \$50,000 or less, or (2) Small Business Projects. If not applicable, enter "N/A" after letter (f), and delete text. Include this paragraph for all other agreements.***
- f. Payment provisions recited in this Agreement are valid and enforceable only if sufficient funds are made available by the Budget Act of the relevant fiscal years for the purposes of implementing the ETP program. In addition, this Agreement is subject to any additional restriction, limitations or conditions enacted by the Legislature which may affect the provisions, terms, or funding of this contract in any manner.

Contractor understands that this Agreement is incrementally encumbered in that only a percentage of the total Agreement amount is available for payment during this fiscal year. Contractor acknowledges that total funding of this Agreement is subject to both sufficient continued Budget Act appropriations to ETP in this fiscal year and ensuing years and also the availability to ETP of other ETP funds designated for training projects. In the event that sufficient funds are not appropriated by the Legislature, or reimbursements specified in the Budget Act are not realized, or are otherwise not available from the Employment Training Fund to fully fund this Agreement, ETP's liability for payment will be limited to available funds. To the extent funds are available, payment shall be determined by the reimbursement rates of this Agreement and shall be limited to the actual hours of training received by specific trainees in the training program at the time that the Contractor receives written notice from ETP that funds are unavailable to fully fund the Agreement in the amount set forth in Paragraph 2(a).

- ***If applicable, insert the following paragraph. If not applicable, enter "N/A" after letter (g), and delete text.***

- g. Turnover Rate: Contractor shall earn the final 25% progress payment for each trainee only if Contractor achieves an average turnover rate of ____% or less for the last 12 months of the Agreement. A report of the turnover rate shall be submitted with the final Agreement closeout invoice.

- ***If applicable, insert the following paragraph. If not applicable, enter "N/A" after letter (h), and delete text.***

- h. Multiple Employer Agreement With New-hire Trainees: Reimbursement shall be earned for new-hire trainees who are placed with ETP eligible employers. Employers must be subject to Unemployment Insurance (U.I.) Fund contributions under the tax rate method. Employers that finance unemployment benefits by an alternate method are eligible to participate in this Agreement only for the purpose of incidental placement of new-hire trainees, as specified in Exhibit A; VII. Trainee Retention Requirements, A.1. Placements with temporary agencies are subject to the restrictions of Title 22, California Code of Regulations, Section 4427.

- ***If applicable, insert the following language. If not applicable, insert "N/A" after letter (i), and delete text:***

- i. Multiple Employer Agreement With Retraitees: The Contractor shall be reimbursed for 70% of the cost per trainee specified in Chart 1, Column 8 for retrainees employed by a business that has previously benefited directly or indirectly from ETP-funded training. This 30% employer substantial contribution shall be applicable only if the participating employer has benefited from ETP-funded retraining, under at least two prior Panel Agreements in the amount of \$250,000 or more at the same facility, and if the business has 101 or more full-time employees. The employer's participation in previous ETP-funded retraining must have been within five years from the start date of training of this Agreement to the end term date of the previously applicable ETP Agreement. The Contractor must have an approved retraining certification form on file for each participating employer, prior to the start of training for a participating employer.

The Contractor shall be reimbursed for 50% of the per trainee cost specified in Chart 1, Column 8 for retrainees employed by a business that has had a substantial contribution applied in a previous Agreement.

- j. Overpayment: Reimbursements earned by the Contractor according to the performance specified under the Agreement shall be used to offset any outstanding financial liabilities owed to ETP under previous ETP Agreement(s). This provision shall remain in force until the monies owed to ETP, plus interest, have been fully repaid.

- ***For CNA to LVN Agreements only, add the following paragraph as 2.(k). Delete if not applicable.***

- k. Contractor is aware that participating employers must have satisfactory evaluations in the annual health facility surveys conducted by the State Department of Health Services as a condition of licensing re-certification. Said satisfactory status must be maintained throughout the term of this Agreement. Contractor shall provide a copy of the survey results or re-certification upon demand by ETP. Contractor shall use best efforts to ensure that participating employers are made aware of, and conform to, this requirement.

3. Subcontracts:

- a. Contractor may subcontract with a third party for training or administrative services in connection with this Agreement. Contractor agrees that any subcontract for administrative services will incorporate the provisions set forth in Exhibit C.
- b. Contractor must provide ETP with written notice of any subcontract prior to its effective date. Said notice shall include at least the following: subcontractor's name, address and contact information; the representative's name, title and contact information; a description of the services; and, the fees or rate payable to the third party. (See ETP Form100D.)
- c. ETP must receive notice of any subcontract for services by an out-of-state provider no later than seven (7) working days prior to its effective date. Any such subcontract must be reviewed and approved by ETP prior to its effective date as a condition precedent to the reimbursement of costs for that provider's services. (See Title 22, California Code of Regulations Section 4421.)
- d. A subcontract for administrative services must be in writing and must be filed with ETP prior to its effective date.
- e. A subcontract for training services may be oral or written. If the subcontract is written, Contractor must make it available to ETP upon request. If the subcontract is oral Contractor must so state and must summarize the terms in a writing filed with ETP. If the subcontract is informal (i.e., email or purchase order) or is part of a pre-existing third-party agreement, Contractor must provide those writings to the extent they are relevant to this Agreement, or must otherwise explain the circumstances of said subcontract in a writing filed with ETP. An email with electronic signature will suffice as a writing for these purposes.
- f. The terms of any subcontract for training or administrative services are subject to review and approval by ETP; and, service delivery under said subcontract is subject to monitoring by ETP. Contractor shall use best efforts to correct any ambiguities, omissions, or inconsistencies with this Agreement that may appear on the face of said subcontract; or, that may occur in the delivery of services under said subcontract, based on information and belief conveyed by ETP as a result of its review or monitoring.

4. Administration: Contractor is directly responsible for the administration of this Agreement. Contractor agrees to apply no more than **(Insert 13% for retraining and 20% for new-hire)** % of payment earned to the cost of administration.

➤ **If project contains variable reimbursement, add the following language as the last sentence of #4 Administration above. If not applicable, delete:**

Due to the variable reimbursement method utilized in this Agreement, Contractor is required to use the ETP Internet class/lab tracking system (which includes videoconference and CBT tracking) for all job numbers in the Agreement.

5. Performance:

- a.1. Contractor shall ensure that ETP or its representative, including the Bureau of State Audits, has the right during normal business hours to (1) examine, reproduce, monitor and audit accounting source payroll documents, and all other records, books, papers, documents or other evidence directly related to the performance of this Agreement by the Contractor, including any subcontract and (2) freely observe and monitor all performance, including interview trainees. Records must be retained within the control of the primary Contractor and be available for review at the Contractor's place of business within the State of California. This right will terminate no sooner than four (4) years from the date of termination of the Agreement or three (3) years from the date of the last payment by ETP to the Contractor, or three (3) years from the date of resolution of appeals, audits, claims, exceptions, or litigation, whichever is later.
- a.2. ETP may audit this Agreement at anytime up to four years following the end of the term of this Agreement. Audits will be performed in accordance with generally accepted Government Auditing Standards (GAGAS), which include sampling of available records.
- b. Contractor shall submit all information and data required for implementation and performance of the training project in a form and manner prescribed by the Panel throughout the term of the Agreement.
- c. ETP shall inform Contractor in writing if performance by Contractor is not satisfactory and may, at its discretion, suspend any payment and/or performance, including training, under the Agreement or terminate the Agreement as provided herein.
- d. ETP may terminate for cause with at least thirty (30) days written notice to the Contractor; except, if ETP has evidence of fraud, it may terminate immediately. The Contractor may terminate at will upon written notice to ETP. Contractor's notice of termination shall be delivered in person or by deposit in the United States mail, addressed to the ETP signatory of this Agreement and shall be deemed to have been given at the time of personal delivery or on the date of deposit in the United States mail as evidenced by the postmark date of the notice.
- e. If Contractor relocates or consolidates the California facility at which training was provided (or the job for which training was provided) with a facility (or a job) located outside California within three years of the Agreement termination, Contractor shall

return, at ETP's discretion, all money earned under this Agreement as provided in Paragraph 2.

- f. Training and the employment retention period for each trainee must be completed within the term of the Agreement. The term of this Agreement may not exceed 24 months after the Effective Date of this Agreement.

➤ ***For CNA to LVN Agreements only, add the following paragraph as 5.f1. Delete if not applicable.***

- f.1 The retention period may begin as of the date the trainee is authorized to work as an LVN by the California Board of Vocational Nursing and Psychiatric Technicians (BVNPT), which the parties understand will precede the date on which the trainee license issued.

- g. The ETP 130 Memorandum submitted to the Panel in connection with this Agreement is hereby incorporated into the Agreement in its entirety, except for any changes that the Panel may require when considering the Memorandum. If there are changes required by the Panel, those changes shall be included in the provisions of the Agreement; significant changes shall be identified in the letter transmitting the Agreement for Contractor signature; and, the remainder of the ETP130 Memorandum shall be incorporated into the Agreement.

- h. Contractor agrees that during ETP-funded training hours, trainees will not produce products or provide services which will ultimately be sold.

➤ ***The following language is applicable to all projects - except SET entrepreneurial training. For entrepreneurial training, insert "N/A" next to letter (i) and delete text.***

- i. No senior level managers or executive staff who set company policy are included in ETP-funded training under this Agreement.

➤ ***If literacy training is being provided, include the following paragraph. If no literacy, enter "N/A", next to letter (j) and delete text.***

- j. If literacy training is provided, a signed statement on Contractor's letterhead must be on file with the Contractor certifying that a formal literacy assessment has been administered and the number of literacy training hours in the Agreement is consistent with the results of the assessment.

➤ ***Insert the following paragraph for all MEC projects.***

- k. Contractor will ensure each trainee has: (1) an individual copy of all necessary printed training materials for the ETP-funded training classes; and (2) if a computer is an integral part of the training, individual access to and use of a computer and necessary software used during the ETP-funded training class. All training materials, computers, and software used during ETP-funded training classes must be sufficiently current to

provide trainees with skills currently utilized in the industry for which trainees are being trained.

- ***For center-based retraining MEC, insert the following paragraph (l). If not applicable, enter "N/A" next to letter (l) and delete text.***

- I. Contractor shall conduct formal assessments of the training needs of individual participating employers or group of employers in a specific industry and design curricula based on these assessments. Formal assessments must be kept on file with the Contractor and be available for ETP review prior to the start of training for a participating employer.

- ***For all MECs training new hires, insert the following paragraph. If not a new-hire MEC, delete letter (m) in its entirety.***

- m. One of the Contractor's essential duties under this Agreement, in addition to providing training, is to provide each trainee a job with an ETP-eligible employer. Furthermore, Contractor will also provide trainees with classes in resume writing and interviewing techniques.
6. Unearned Funds: All unearned monies shall be returned to ETP with statutory interest computed from the first day of the month following the date the funds are received. If the Contractor petitions for bankruptcy, ETP shall be listed and scheduled as a creditor.
 7. Indemnification: Contractor shall indemnify and hold harmless ETP, the State of California and their officers, employees or agents from and against any and all claims, liabilities, losses, damages, costs or expenses including reasonable attorney's fees (Claim) that arise from or are related to this Agreement. The provisions of this Section 7 shall specifically apply to any Claim based on the action or omission of Contractor or its officers, employees, agents, consultants or vendors. Contractor shall give ETP prompt written notice of any Claim. The provisions of this Section 7 shall survive termination of this Agreement.
 8. Governing Rules: This Agreement shall be governed by the laws of the State of California. Contractor shall comply with all applicable federal, state, and local laws, ordinances, and regulations. Contractor acknowledges it has received a copy of and has reviewed applicable ETP enabling legislation, regulations and the ETP Contractor's Guide.
 9. Other Funds: Contractor shall notify ETP in writing promptly of other government-funded training program(s) used to support the training under this Agreement. All other funds provided by any governmental entity in whatever form shall be used to reduce the training costs herein. No fee of any kind shall be required of any trainee except as may be provided under law. ***For CNA to LVN Agreements only, add the following as the last sentence of this paragraph. Delete sentence if not applicable:*** Furthermore, trainees shall be fully reimbursed by Contractor for any tuition or fees that they may have already paid to the training provider for the ETP-funded portion of the training program.

- ***For single employers, insert the following paragraph (a). Delete if not applicable.***

- a. Supplemental Training: Contractor represents that it has made an ongoing commitment to training, and that ETP funding under this Agreement will not displace its own training resources.

➤ ***For MEC, insert the following paragraph (a). Delete if not applicable.***

- a. Supplemental Training: Contractor will explain to participating employers that ETP funding under this Agreement must not displace their own training resources. In addition, Contractor will use best efforts to ensure that ETP funds are not applied toward apprenticeship training.

10. Promotional Material: Any material used to promote this training project or the use of the ETP name or logo must be approved by ETP before its use.

➤ **For MECs only, insert the following language. Delete for single employer contracts:**

For multiple employer contracts, training support activities for unemployed workers may include recruitment of training participants; trainee intake assessment to determine eligibility; job development; and, job search assistance and placement in specific jobs. For retraining projects, training support activities may include recruitment of participating employers, and assessment of employer-specific job requirements. Total costs associated with all recruitment activities for this project may not exceed the dollar amount identified in Exhibit A, Chart 1, Multiple Employer Support.

11. Union Activities: Contractor represents that it will not use ETP funds to assist, promote, or deter union organizing or union activities.
12. Modifications. The parties agree that certain terms and conditions of this Agreement may be modified at the request of Contractor with the prior written approval of ETP so long as there is no increase in the approved amount of funding, and no change in the scope or intent of training. The terms and conditions subject to modification are restricted to the following, as may be applicable to the method of reimbursement (standard or variable):
 - a) add or delete a Job Number;
 - b) expand or reduce the maximum Number of Trainees to Retain in a job number;
 - c) change the Occupations for trainees in a job number;
 - d) redistribute the Number of Trainees to Retain between job numbers, but for trainees who are moved from a Welfare to Work job number; and
 - e) revise the Types of Training identified in the Menu.

The redistribution of Number of Trainees to Retain from a W2W job number into any other job number may only be accomplished by formal contract amendment. In that instance,

Contractor must demonstrate that it used "best efforts" to enroll CalWORKS recipients in the W2W job number and explain why it was unsuccessful, to the sole satisfaction of ETP.

If ETP approves a modification pursuant to (a) through (d) above, it will enter the new information in the Chart 1 Summary at Exhibit A of this Agreement, as maintained by ETP in its electronic Management Information System, and transmit a copy of same to Contractor. If ETP approves a modification pursuant to (e) above, it will also make the appropriate revision to Exhibit B of this Agreement and transmit a copy of same to Contractor.

13. Assignment: This Agreement shall be binding on the successors and assigns of Contractor except as may be agreed upon in advance in a writing signed by an authorized representative of ETP.
14. Nondiscrimination: Contractor represents that it is an equal opportunity employer, and shall remain compliant with all state and federal laws pertaining to fair employment practices during the performance of this Agreement. In particular, Contractor shall not unlawfully discriminate or harass any employee or applicant for employment based on sex or sexual orientation, race, color, age, ancestry, religious creed, national origin, physical or mental disability, medical illness or condition, or marital status.
15. Notices: All Notices in connection with this Agreement must be in writing, and shall be effective upon receipt. Notice of termination or material breach and final notice of overpayment must be delivered by certified U.S. Mail with return receipt requested, or by a commercial courier with receipt. Otherwise, notices may be delivered by U.S. Mail, commercial courier, FAX or email. All notices to ETP must be addressed to the manager of a field office or a Sacramento office as appropriate to the subject matter. All notices to Contractor must be addressed to the authorized representative identified below. This same representative is designated as the contact person for general inquiries by ETP. The parties agree to keep each other informed as to any change in the contact information for their representatives.

➤ ***Please bold the following information:***

Insert name and job title

Insert name of company

Insert mailing address (including city, state, and zip code)

Telephone Number: *Insert number*

Fax: *Insert number*

Insert E-mail address

16. Entire Agreement: This is the entire Agreement between the parties and it supersedes all prior oral or written communications and all contemporaneous negotiations or understandings between them.

17. Amendment. This Agreement may not be amended except in a writing that is signed by both parties, but for the modifications provided for under Section 12.

Contractor and ETP agree to the terms and conditions in this Agreement by signature of their authorized representatives set forth below:

APPROVED FOR ETP

APPROVED FOR CONTRACTOR

- ***Please enter all information in the appropriate space. Information should be properly aligned (i.e., the phone number should be entered directly above "Telephone", and the fax number should be entered directly above "FAX".***

➤ Ada F. Carrillo, Acting Executive Director

Type Name and Title

Type Name and Title

Signature Date

Signature Date

1100 J Street, 4th Floor

Address

Address

Sacramento, CA 95814

City State Zip

City State Zip

(916) 327-5246 (916) 327-5270

Telephone FAX

Telephone FAX

TRAINING PLAN

Project Title: ****(INSERT project title)***

I. A. Training Project Profile: Contractor certifies the following funding criterion applies.

1. Projects to promote a healthy labor market in a competitive California economy.

☐ Job Creation: training of unemployed workers

☐ Trainee is a worker in an area of high unemployment or large numbers of unemployed.

☐ Retraining: retraining workers of companies threatened by out-of-state competition

☐ Trainee is a worker in an area of high unemployment or large numbers of unemployed.

☐ Trainee is employed in full-time stable employment, but earning low wages and lacking the essential job skills necessary to improve employment opportunities.

2. Special Employment Training (SET) for Frontline Workers:

☐ earning at least the state average hourly wage

☐ in high unemployment areas

☐ who are small business owners/entrepreneurs

☐ with multiple barriers to employment

B. Legislative Priorities

☐ stimulating exports/imports

☐ locating into or expanding within California

☐ moving to a high performance workplace

☐ hiring displaced workers

☐ workers in danger of being displaced

☐ workers who have received notice of impending layoff

☐ developed jointly by management and workers

☐ career ladders

☐ promoting California's manufacturing workforce

II. Contractor Profile

A. Contractor's full-time employees: Worldwide _____ In California _____

B. Subsidiary: Yes ☐ No ☐ If "Yes", parent company: _____

C. County(ies) where trainees are to be employed: _____

➤ *Complete Item D for all employers:*

➤ *For single employers: Identify the total dollar amount for the entire contract.*

➤ *For MEC: Identify the total dollar amount as it pertains to the core group of participating employers. Also, include any contribution that the primary Contractor is making towards training related expenses over and above the costs reimbursed by ETP.*

D. In-kind Contributions:

Total contribution: \$* **Insert total in-kind amount for entire contract. For MECs include any contribution that the primary Contractor is making toward training related expenses over and above the costs reimbursed by ETP. Include any contribution by participating employers.**

Trainee wages paid during training: \$* **Insert dollar amount**

Other contributions: \$* **Insert dollar amount(s) and detailed description of all other contributions towards training - excluding trainee wages (i.e., training supplies, facilities, equipment costs directly attributable to training).**

➤ ***When language for multiple categories of trainees (e.g. retrainees, new-hire trainee, SET) is used throughout the Agreement, make sure the language is labeled to clearly indicate which training category the language is applicable to (e.g. SET) Delete this comment.***

III. Trainee Criteria

➤ ***Include the applicable paragraph(s) and delete all others. Use the following standard new-hire/retraining paragraphs for all projects – except SET and CNA to LVN projects as noted.***

New-hire trainee: A new-hire trainee is a person who, prior to the start of training, is unemployed and:

1. Has established an Unemployment Insurance (UI) claim in this State and has been determined eligible for UI by the EDD; or
2. Has exhausted UI benefits from this State within the preceding twenty-four (24) months.

Retrainees: A retrainee is an individual who meets one of the following criteria:

1. Has been employed full time by the Contractor or a participating employer in California for a minimum of 90 days as of the start date of that individual's training; or

2. Has been employed full time by Contractor or a participating employer in California for less than 90 days with their current employer and had been previously employed for at least an average of 20 hours per week for at least 90 days by an ETP eligible employer(s) during the 180 day period preceding their hire date with their current employer; and the 90 days of prior employment may be non-consecutive and may also be completed with multiple employers; or
3. Has been employed full time by Contractor or a participating employer in California for less than 90 days at the start of training and at the time of hire met the following criteria:
 - a. Has established an Unemployment Insurance (UI) claim in this State and has been determined eligible for UI by the EDD; or
 - b. Has exhausted UI benefits from this State within the twenty-four (24) months preceding their hire date with the current employer; or
 - c. Had received, at the time of hire, a notice of layoff from the prior employer.

➤ **For W2W training, add the following paragraph:**

W2W Trainees: Trainees in a Welfare to Work job number must be eligible for or receiving CalWORKS benefits at the start of training, or must have been receiving said benefits within a year of the start of training. These trainees may be employed or unemployed at the start of training.

➤ **For CNA to LVN training, add the following paragraph only - and delete the standard retraining/new-hire language above:**

CNA to LVN: Trainees in a CNA to LVN training program must be employed by a for-profit health facility as a Nurse Assistant or Caregiver before they can be enrolled in the ETP-funded portion of their training program. Trainees must also have completed the first 800 hours of that program before they can be enrolled.

➤ **SET trainees need not meet standard retrainee/new-hire trainee eligibility requirements. Insert the following statement for all SET projects – except SET entrepreneurial training.. If SET entrepreneurial training, delete the following sentence.**

Special Employment Training (SET) Projects: All SET trainees are frontline workers who directly produce or deliver goods or services.

➤ **In addition to the frontline worker language, for SET High Unemployment Areas insert the following language.**

SET Trainee Working In High Unemployment Area: Trainee must be working in a county where the unemployment rate is at least 25% higher than the State average – or- if county unemployment rate is not 25% higher than the state average, within this

county there is a definable area with an unemployment rate at least 25% higher than the State average (based on LMID and census data information at the time the application for funding is received by ETP).

➤ ***For SET entrepreneurial training, add the following language:***

SET Entrepreneurial Training: A SET entrepreneur is a small business owner who meets the definition of “frontline workers” at C.C.R. Section 4400(ee)(4). The owner’s business must have at least one, but less than 10 full-time employees. In addition, the business must qualify as an “employer” within the meaning of Section 10201(b) Unemployment Insurance Code.

In addition to the “frontline workers” language, for SET trainees with barriers to full-time employment, insert the following paragraph.

SET Trainee With Barriers To Full-time Employment: A SET trainee with barriers to full-time employment must have at least two identified barriers. The barriers may include a physical disability; lack of training; lack of communication skills or literacy; or other similar factors; or does not have the means to readily enter or fully participate in the labor force (e.g. underemployed; individuals with limited English proficiency; Reading/Math skills below the 7th grade level).

IV. Trainee Certification Requirements

➤ ***Include the appropriate paragraph(s) and delete all others. If none apply, delete all language and enter “N/A” after the section title. Do not include the following new-hire trainee paragraph for SET projects.***

New-hire Trainee: Contractor shall submit an Unemployed Trainee Certification form to ETP, via the Internet, at least ten (10) days, but no more than ninety (90) days, prior to the start date of training.

➤ ***Include this paragraph in all Agreements with retrainees for “prospective” retrainees who, prior to start date of training, were employed less than 90 days full time by the participating employer. DO NOT INCLUDE FOR SET.***

Retrainees (currently employed less than 90 days): Contractor shall submit an ETP 83 Recently Hired Retrainees Certification (Employment History) form at least ten (10) days, but no more than ninety (90) days, prior to the start date of training.

➤ ***For all SET projects enter “N/A” next to item IV. Trainee Certification Requirements.***

V. Trainee Enrollment Requirements

➤ ***Include this standard enrollment paragraph in all Agreements – including SET.***

A trainee is eligible to be enrolled at the start of training, but should be enrolled once the number of class/lab, videoconference, and CBT hours listed in Chart 1, Column 10 have

been completed. To enroll trainees in the training project, the Contractor must submit a Trainee Record (ETP 104) enrollment form via the Internet, within thirty (30) days of completion of the required class/lab, videoconference, and CBT enrollment hours. A trainee must complete all training and retention prior to subsequent enrollment in the same project. A trainee cannot be enrolled in the same job number more than once within the same project. A trainee shall not be enrolled in more than one ETP project at the same time.

- ***Include for projects with retrainees. Delete if not applicable. DO NOT INCLUDE FOR SET.***

Retrainees (employed less than 90 days): Prior to enrollment, Contractors must receive, via the Internet, ETP approval for trainees submitted on the ETP 83, Recently Hired Retrainees Certification form (Employment History).

- ***Include for new-hire trainee projects. (Do not include for SET). Delete if not applicable.***

New-hire Trainees: Prior to enrollment, the Contractor must (1) submit an Unemployed Training Certification Request form via the Internet to determine trainee eligibility, and (2) receive ETP approval to enroll the trainee.

- ***In addition to standard enrollment paragraph, include the following for SET Barriers to Full-time Employment. Delete if not applicable.***

Special Employment Training/Barriers To Full-time Employment: Contractor shall pre-screen trainees to determine their eligibility based on having at least two barriers to trainee's full-time employment. Documentation of trainee eligibility must be on file with the Contractor prior to a trainee's enrollment.

- ***Include for Welfare to Work training:***

Welfare to Work: Contractor shall use "best efforts" to ensure that the New Hire enrollment population includes at least 20% CalWORKS recipients, to be funded under a separate job number(s). In order to demonstrate best efforts, Contractor must provide quantifiable information in the form and manner prescribed by ETP. Prior to enrollment, Contractor shall pre-screen New Hire trainees to determine their eligibility as CalWORKS recipients, and maintain documentation of this effort on file for review by ETP upon request.

VI. Training Standards

- A. Curriculum: Contractor shall provide training pursuant to the Curriculum in Exhibit B.
- B. Distribution of Training Hours: Distribution of training hours between categories of training (i.e., class/lab/videoconference, CBT) may be changed only by a formal, written Amendment to the Agreement.

C. Trainers: Class/lab, videoconference trainers must be company employees or training vendors who are knowledgeable and competent in the subject matter. ETP makes no claim and has no responsibility pertaining to qualifications of any training vendor or individual providing training. Any trainee who is also a trainer must complete all class/lab hours for each specific type of training prior to providing the same type of training to others.

D. "Training" Definitions:

➤ ***For CBT, insert in item D.(3), the methodology Contractor will utilize to document that trainees complete the CBT course.***

1. Classroom training is formal instruction provided to a group of individuals, in a classroom setting removed from the trainee's usual work environment, meeting regularly for training in a specific skill under the constant and direct guidance of a qualified trainer.
2. Laboratory training is "hands-on" instruction or skill acquisition conducted in a non-productive environment, or simulated work setting, under the direct training of a laboratory trainer that may require the use of specialized equipment or facilities by the trainee. The trainer's time during laboratory training must be dedicated exclusively to the instruction of trainees.

During laboratory training hours, trainees cannot produce products or provide services which will ultimately be sold. However, the trainer may utilize 10 percent of laboratory instruction time to review, advise, and answer questions on trainees' work projects which are related to the laboratory training.

3. Technology-based distance training is instruction provided through videoconference and/or computer-based training (CBT). This training should be provided in conjunction with class/lab instruction:

Videoconference training is live, interactive instruction provided by a trainer through a video communications session between 2 or more locations.

CBT is instruction which occurs when a trainee uses a computer to access and learn training material through computer-associated media, such as the Internet; Intranet; local area network; and, CD-ROM.

When CBT is provided, Contractor will utilize the following methodology to document that trainees complete the CBT course(s) as required:

_____.

VII. Trainee Retention Requirements

- ***Following is standard language for single and multiple employer Agreements. Include the appropriate paragraph(s) and delete all others. Customize paragraph as appropriate. For single employers, delete “a single participating employer”. Delete new-hire trainee sentence if not applicable.***

A. Full-time Employment: Employment for each trainee shall be in the occupations listed in Chart 1, Column 2 and shall result in employment customarily considered full time for the occupation and shall have definite career potential and a substantial likelihood of providing long-term job security. Each trainee must be employed full time, at least 35 hours per week, with the Contractor or a single participating employer for a period of at least ninety (90) consecutive days immediately following the completion of training. *New-hire trainees should be placed in a job within 30 days following completion of the trainee's training.* The retention period shall be completed no later than the last day of this Agreement. Wages at the end of the 90-day retention period shall be equal to or greater than the wages listed in Chart 1, Column 14.

- ***For trainees under a Welfare to Work pilot program, add the following. Delete if not applicable:***

However, trainees in a Welfare to Work job number will satisfy retention requirements if they are employed full time for at least 30 hours per week for a period of at least ninety (90) consecutive days, or for a period of 500 hours within 150 days, with up to three participating employers.

- ***For multiple employer Agreements with new-hire trainees, insert the following paragraph. If retention approved with more than one eligible employer, modify the language accordingly.***

A.1. Contractor agrees to comply with rules and regulations governing the ETP, including, but not limited to the following:

Contractor shall place each trainee who has completed training with a single eligible employer for the entire retention period, pursuant to Unemployment Insurance Code, Section 10209(f).

Contractor shall not place any trainee with a Federal agency for her/his required post-training retention period. Placement with a non-Federal public entity or non-profit organization shall be permitted only where such entity or organization has elected an alternate method of financing its unemployment insurance liability pursuant to Article 5 (commencing with Section 801) or Article 6 (commencing with Section 821) of the Unemployment Insurance Code and where placement is limited to new-hire trainees who received training as an incidental part of a training project designed to meet the needs of one or more private sector employees.

Contractor may place up to 20% of the total new-hire trainees placed and retained in employment under the contract with a public entity or nonprofit organization that has elected an alternate method of financing its liability for unemployment insurance compensation benefits.

Contractor may place new-hire trainees through temporary employment agencies only when all of the following circumstances apply:

- a. When placements through temporary employment agencies do not exceed 10% of the total actual number of new-hire trainees placed and retained in employment under the contract; and
- b. When placements through temporary employment agencies are not included in the core group of eligible employers at the time the contract is approved; and
- c. Where the above two conditions are met, the retention period for placements through temporary employment agencies shall consist of 180 consecutive days before payment is considered earned.

- ***For workers not customarily employed for 90 consecutive days with a single employer (i.e., construction trades, agriculture, entertainment industry, Work Sharing) use the following language. Customize paragraph as appropriate. For single employers, delete "a single participating employer". Delete the new-hire trainee sentence if not applicable.***

- A. Full-time Employment: Employment for each trainee shall be in the occupations listed in Chart 1, Column 2 and shall result in employment customarily considered full time for the occupation and shall have definite career potential and a substantial likelihood of providing long-term job security. Each trainee must be employed full time, at least 35 hours per week, with the Contractor or a single participating employer for a period of at least ninety (90) consecutive days or * * immediately following the completion of training. *New-hire trainees should be placed in a job within 30 days following completion of the trainee's training.* The retention period shall be completed no later than the last day of this Agreement. Wages at the end of the 90-day or *** retention period shall be equal to or greater than the wages listed in Chart 1, Column 14.

- ***For trainees in occupations in which it is not customary for a worker to be employed 90 consecutive days with a single employer, insert:***

*500 hours within 150 days with one or more employers

**500-hour

- ***For trainees in the entertainment industry, in which it is not customary for a worker to be employed 90 consecutive days with a single employer, insert:***

*500 hours within a six-month period with one or more employers

**500-hour

- ***For employers participating in the Work Sharing Unemployment Insurance program, add:***

*if participating in a recognized Work Share program as defined in Section 1279.5 of the Unemployment Insurance Code, for 500 hours within 150 days

**500-hour

- ***For SET trainees working in high unemployment areas use the following paragraph (A). For MEC: Based on Panel approval, retention may be completed with “no more than three” employers as articulated in the following paragraph – otherwise, retention may be with “up to two” employers. If necessary, modify language accordingly. For single employer delete “no more than three eligible participating employers”.***

- A. Full-time Employment: Employment for each trainee shall be in the occupations listed in Chart 1, Column 2 and shall result in employment customarily considered full time for the occupation and shall have definite career potential and a substantial likelihood of providing long-term job security. Each trainee must be employed full time, at least 35 hours per week, with the Contractor or no more than three eligible participating employers for a period of at least ninety (90) days within one hundred and twenty (120) days immediately following the completion of training. *New-hire trainees should be placed in a job within 30 days following completion of the trainee's training.* The retention period shall be completed no later than the last day of this Agreement. Wages at the end of the 90-day retention period shall be equal to or greater than the wages listed in Chart 1, Column 14.

- ***For SET entrepreneurial training use the following paragraph “A”:***

- A. Full-time Employment: The business must employ at least the same number of full-time employees on the 91st day after the owner's training, as were employed at the start of training. However, staff may modify this requirement for good cause on a case-by-case basis.

(Insert company/entity's legal name)

CURRICULUM

➤ ***Insert Curriculum pages here. Do not include a blank cover page.***

Comment: The parties agree that the training identified in this Curriculum may be revised from time-to-time during the term of this Agreement at the request of Contractor and with the prior written approval of ETP. (See also Section 12 in this Agreement.)

SUBCONTRACTS

1. The Employment Training Panel (ETP) is not a party to this Agreement nor is Subcontractor a beneficiary in any way under the ETP Agreement. ETP is not obligated in any manner for any liability that may arise out of this Agreement. No third party relationship is intended or created with ETP under this Agreement.
2. Subcontractor agrees that ETP has the right, during normal business hours, to examine or audit any and all records, books, papers and documents related to the delivery of services under this Agreement to the extent ETP deems necessary. This disclosure provision shall survive termination of this Agreement.
3. Subcontractor agrees that ETP has the right, during normal business hours, to freely observe and monitor the delivery of services under this Agreement with or without the Subcontractor's presence. In particular, Subcontractor agrees that ETP has the right to interview trainees, trainers and training personnel.
4. Subcontractor agrees to maintain all records and other writings that pertain to the delivery of services under this Agreement for a period of no less than four (4) years from termination of the ETP Agreement, or three (3) years from fiscal closeout of final invoicing under the ETP Agreement, whichever is later. This recordkeeping provision shall survive termination of this Agreement.
5. This Agreement shall be governed by the laws of the State of California. If litigation, arbitration or other proceedings arise in connection with this Agreement, the exclusive venue and place of jurisdiction is the County of Sacramento in the State of California. This governing law provision shall survive termination of this Agreement.
6. In the event of any conflict or inconsistency between the terms of this Agreement and the ETP Agreement, the latter shall govern and prevail.
7. In no event shall the administrative fees paid under this Agreement with ETP funds exceed 13% of payment earned.

Note: The terms set forth above need not be used verbatim in the Subcontractor Agreement, but any variation must be approved by the ETP Legal Office. These terms may appear at any place in the Subcontract, or may be formatted as an Exhibit or Addendum. If any of these terms conflict with or are inconsistent with a pre-existing Subcontract, please contact the ETP Legal Office to discuss. Contact: (916) 327-5470